

# Memorandum


## VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Division of Water Program Coordination

9<sup>th</sup> Floor, 629 East Main Street, Richmond, VA

SUBJECT: Guidance Memorandum No. 01-2002  
Implementation Guidance for Financial Assurance Regulation, 9 VAC 25-650-10 et seq.

TO: Regional Directors

FROM: Larry G. Lawson, P.E. 

DATE: January 10, 2001

COPIES: Regional Permit Managers, Regional Compliance and Enforcement Managers, Regional Water Permit Managers, Mary Jo Leugers, Martin Ferguson, Leslie Beckwith, OWPP Staff

This guidance outlines the suggested DEQ protocol to implement 9 VAC 25-650-10 et seq., "Closure Plans and Demonstration of Financial Capability". 9 VAC 25-650-10 et seq. requires submittal of certain documents in conjunction with application or reapplication for a VPDES permit for a specific category of facilities. Review of selected documents should be performed by DEQ regional office staff, with approval by the Regional Director or his designee. The Office of Water Permit Programs will provide or coordinate technical assistance within DEQ to the regional office staff as necessary. Financial documents required under 9 VAC 25-650-10 et al. will be reviewed by Central Office financial assurance staff. Additionally, in some instances, technical review of construction documents by the Virginia Department of Health may need to be coordinated by the DEQ regional office.

**Appendix A** to this guidance memorandum is the document "Financial Responsibility Demonstration Review Procedures, Private Sewage Treatment Facilities". This document is the procedure document for review of the actual financial assurance mechanism and will be used by Central Office financial assurance staff.

**Appendix B** is a listing of facilities identified as of November 14, 2000 as being subject to the requirements of the regulation. However, regional staff should review all VPDES permit applications and reapplications received after December 14, 2000 to determine whether any specific facility is subject to the requirements of the regulation.

### Applicability

9 VAC 25-650-10 et seq. applies to all privately owned sewerage systems subject to the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day to State waters. A *private residence* is defined in the regulation as "any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated." (9 VAC 25-650-10). The definition further states that private residences "include, but are not limited to, single family homes, duplexes, condominiums, mobile homes, and apartments. Private residences do not include hotels, motels, seasonal camps, and industrial facilities that do not also serve as residences." (9 VAC25-650-10).

In short, the regulation, and therefore this guidance, applies to any privately owned facility within the stated flow regime where the interruption of sewer service would make it such that residents served by that facility could no longer occupy their permanent home.

## Background and Intent

In March 2000, the General Assembly of Virginia approved Senate Bill 177, which resulted in the amendment of the Code of Virginia by adding Section 62.1-44.18:3; *Permit for private sewerage facility; financial assurance; violations*. This section requires owners of privately-owned sewerage systems or sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to "file with the Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations." (§62.1-44.18:3.A). The section requires the plan to include a demonstration of financial capability to implement the plan.

Section 62.1-44.18:3.B requires the State Water Control Board to promulgate regulations to implement the provisions of the Act to be effective within 280 days of its enactment. Because of this requirement, DEQ developed 9 VAC 25-650-10 et seq.; *Closure Plans and Demonstration of Financial Capability*. This regulation was promulgated as an emergency regulation and was adopted by the State Water Control Board at its December 2000 meeting, effective December 14, 2000.

The intent of the law is to provide for the continued provision of essential sewer service and/or the operation of a privately owned wastewater treatment facility in accordance with the terms and conditions of a VPDES permit, without the expenditure of public funds, in the event a small privately owned treatment facility is abandoned by its owner or operator or otherwise ceases to operate.

## Submittal Requirements, Dates, and DEQ Review Timelines

The regulation requires three items be submitted to DEQ for review and approval:

1. Abatement, or *Closure Plan*
2. Cost Estimate
3. Financial Assurance Mechanism

The following table presents the submittal requirements and DEQ review periods for each of the three items:

Item	Owner or Operator Submittal	Owner or Operator Review and Update	DEQ Review Deadline
<b>Facilities Applying for New VPDES Permit</b>			
Closure Plan	Concurrent with VPDES permit application	End of each VPDES permit term. Updated plan due concurrent with reapplication.	Regional Office 60 days
Cost Estimate	Concurrent with Closure Plan	Full review at end of each permit term. Due with updated plan. Must be adjusted annually for inflation 60 days prior to anniversary date of financial assurance mechanism.	Regional Office 60 days Central Office review of inflation adjustments
Financial Assurance Mechanism	Draft concurrent with cost estimate Actual mechanism 90 days prior to discharge to State waters	Annually adjust for inflation. Adjust as necessary if any other change in cost estimate.	Central Office 60 days for draft 10 days for actual mechanism
<b>Facilities Currently VPDES Permitted</b>			
Closure Plan	Concurrent with <i>next</i> VPDES permit application	End of each VPDES permit term. Updated plan due concurrent with reapplication.	Regional Office 60 days

Item	Owner or Operator Submittal	Owner or Operator Review and Update	DEQ Review Deadline
Cost Estimate	Concurrent with Closure Plan	Full review at end of each permit term. Due with updated plan. Must be adjusted annually for inflation 60 days prior to anniversary date of financial assurance mechanism.	Regional Office 60 days Central Office review of inflation adjustments
Financial Assurance Mechanism	Draft concurrent with cost estimate Actual mechanism ten (10) days after DEQ approval of the Closure Plan and cost estimate.	Annually adjust for inflation. Adjust as required if any other change in cost estimate.	Central Office 60 days for draft 10 days for actual mechanism

### Initial Closure Plan, Cost Estimate, and Financial Assurance Mechanism

An initial closure plan and cost estimate must be submitted for DEQ review and approval. A draft financial assurance mechanism must be submitted concurrently with the closure plan for review and approval by DEQ. Closure plan and cost estimate review should be performed by regional office staff, with technical assistance provided by the Office of Water Permit Programs, if necessary. Review of the draft financial assurance mechanism will be performed by Central Office financial assurance staff. Therefore, upon receipt in the DEQ Regional Office, the *draft* financial assurance mechanism should be immediately forwarded to the Central Office Financial Assurance Manager.

In all cases DEQ must review and approve or reject the closure plan, cost estimate, and draft financial assurance mechanism within 60 days. Review of plans that include a facility closure plan in accordance with the VDH Sewerage Regulation (VDH Closure Plan) must be coordinated with the VDH to obtain concurrence on that part of the plan which is addressed by the Sewerage Regulation. Submittal of the initial plan and cost estimate, and the subsequent financial assurance mechanism is required as follows:

1. New facilities (no VPDES permit issued): The closure plan and cost estimate for a new facility is to be submitted concurrently with the owner or operator's initial application for a VDPES permit. After DEQ approval of the plan, the owner or operator must submit a financial assurance mechanism at least 90 days prior to actual discharge to State waters.

**DEQ water permitting staff should not issue a VDPES permit for a facility unless the closure plan, cost estimate, and draft financial assurance mechanism have been approved. Furthermore, an approved financial assurance mechanism must be in place at least 90 days prior to the date the facility discharges to State waters. A VPDES permit special condition prohibits discharge to State waters until the approved financial assurance mechanism is in place.**

2. Existing facilities with a valid VPDES permit: For facilities currently discharging to State waters with a valid VPDES permit, a closure plan, cost estimate, and draft financial assurance mechanism must be submitted concurrently with the owner or operator's first reapplication for a VDPES permit following the date the regulation was adopted by the State Water Control Board (December 14, 2000). The owner or operator must then submit the actual financial assurance mechanism within 10 days of DEQ approval of the plan, cost estimate, and draft mechanism. Because the total time line after submittal is between 70 and 90 days, the financial assurance mechanism should be in place well within the 120-day permit issuance period.

**The Regional Office should not reissue a VDPES permit for an existing facility unless the closure plan, cost estimate, and draft financial assurance mechanism have been approved, and an approved financial assurance mechanism is in place.**

To ease the initial burden of providing financial assurance, facilities that are subject to the regulation and have a valid VPDES permit on the date the regulation was adopted (December 14, 2000) may request incremental funding of the financial assurance. Approval of incremental funding is subject to specific requirements and is at the sole discretion of the DEQ.

### **Established Closure Plans and Cost Estimates**

Once a closure plan and cost estimate have been established, and a financial assurance mechanism is in place, periodic review and updating is required. The allowable financial instruments generally have terms of one year, and therefore need to be renewed and updated annually. The closure plan and cost estimate need to be reviewed, and updated if necessary, at the end of each VPDES permit term so that DEQ review and approval can be secured during the permit reapplication process.

1. Annual review of cost estimate and financial assurance mechanism: The owner or operator is required to annually update the cost estimate to account for inflation, and adjust the amount of the financial assurance mechanism accordingly.

Sixty days before the anniversary date, the owner should make the adjustment. Annual cost adjustments can be made by recalculating the closure plan cost in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business.

Where the closure plan cost is recalculated in current dollars, regional staff should review the cost estimate. Where an inflation factor is used to update the cost estimate, the cost adjustment documentation should be forwarded to Central Office financial assurance staff for review.

2. Review of closure plan and cost estimate at the end of a VPDES permit term: Where a closure plan exists and a financial mechanism is in place, the plan and cost estimate must be reviewed by the owner or operator and resubmitted, along with a written summary of the review and any modifications to the plan, concurrently with the owner's application for VPDES permit reissuance.

Review of plans that include a facility closure plan in accordance with the VDH Sewerage Regulation (VDH Closure Plan) must be coordinated with the VDH to obtain concurrence on that part of the plan which is addressed by the Sewerage Regulation.

DEQ must notify the facility owner or operator of its decision to accept or reject the financial assurance mechanism(s) within 60 days of receipt.

### **Review Procedure and Details**

The following sections provide detailed explanations of the requirements for each of the three items that must be submitted to DEQ.

#### **1. Closure Plan**

**Reviewer:** Submitted to and reviewed by regional office water permitting staff.  
**Timeline:** 60 day review period.

An owner or operator has five choices regarding closure plans. The owner can submit a plan consisting of one or a combination of the following:

A. Facility Closure: A closure plan including this option must result in the cessation of the discharge to State waters. Upon completion of this plan, the facility should no longer require a VPDES discharge. The plan must certify that the facility will be closed in accordance with the facility closure plan approved by the Virginia Department of Health (VDH). A closure plan including this option should include the VDH-approved plan, as well as some proof that the plan

has indeed been VDH approved. This plan must also include a description of and time line for how the influent flow will be terminated. For example, eviction of apartment residents and condemnation of the building(s), closure of a mobile home park, installation of individual septic systems, etc. Provision must be made, if this option is proposed, to provide continued operation of the facility for the time period from plan implementation to cessation of discharge to State waters.

B. Connection to Alternative Treatment Works: A plan including this option must result in the cessation of direct discharge from the facility to State waters. As for the Facility Closure option, upon completion of this plan, the facility should no longer require a VDPES permit. Therefore, the plan must include the same elements as for the Facility Closure option, with the exception of the description of how the influent flow will be terminated. In addition to including a VDH approved Facility Closure plan, this plan must include a detailed plan for rerouting of the flow to an alternative treatment works. The rerouting plan must be workable, design drawings must be provided, and all necessary connection approvals and easement agreements must be obtained and submitted as part of the plan. As with the Facility Closure option, provision must be made to provide continued operation of the facility for the time period from plan implementation to cessation of the direct discharge to State waters.

C. Transfer of the Facility to Local Government: A plan including this option must include written agreement by the local government or sewage treatment authority that, upon the direction of DEQ to implement the plan, it will take over and operate the facility in accordance with the existing VPDES permit. The agreement must also certify that the local government or sewage treatment authority will either apply for a new VPDES permit or apply for transfer of the existing VPDES permit for the facility naming the local government or sewage treatment authority as the permit holder.

D. Contract Operation: This option is similar to the local government transfer option above, except that the responsibility for operation would transfer to a private entity rather than a local government. Contract operation must be by a named private company or other entity licensed to operate wastewater treatment facilities in Virginia and licensed to operate the specific facility to which the plan applies. A signed contract, executed by the contract operator, contingent only upon approval of the closure plan by DEQ, must be submitted as part of the plan. Furthermore, the contract must specify that upon direction by DEQ or a third party named in the plan, the contractor shall:

1. operate the facility for the term specified in the contract (at least five years);
2. operate the facility, for the term specified, in accordance with the terms and conditions of the VPDES permit in effect for the facility at the time the closure plan is implemented; and
3. assume, for the term specified in the contract and without exception, all responsibilities and liabilities associated with the facility's discharge to State waters.

The company named as the contract operator must be independent of the facility owner or operator. That is, can not be owned by the same person(s) or be a subsidiary of the same company. This is to prevent the possibility that the contract operator goes out of business at the same time or immediately subsequent to the facility owner's abandonment of the facility.

E. Alternative Plan: Because the law is not specific as to the type of plan required, the regulation allows a facility owner to submit an alternative plan which will satisfy the requirements of the law; that is, to abate, control, prevent, remove, or contain any substantial threat to public health or the environment resulting from the cessation of operations at the facility. If an alternative plan is submitted, it is largely up to the professional judgment of the DEQ staff whether the plan meets the intent of the law. Any plan submitted must satisfy the following basic criteria:

1. The plan must result in there being no substantial threat from the discharge to public health or the environment; and
2. The plan must ensure continued operation of the facility in accordance with the VPDES permit for the discharge from the time the plan is implemented until the plan is completed.

Review of alternative plans should be performed in a collaborative effort between the Regional Office and the Office of Water Permit Programs to ensure statewide consistency of acceptance criteria for site-specific alternative plans.

A critical requirement of any closure plan is the assumption that the plan will be carried out by a third party. The assumption is made that the owner or operator has abandoned the facility, is uncooperative or unreachable, and will not be the party implementing the plan. Any plan submitted, other than those that provide only for continued service and specifically name the party that will assume responsibility for operation in accordance with the VPDES permit, must include a named third party that, upon notification by DEQ, will implement the plan.

Closure plans identifying a third party to carry out the plan must include written agreement by the named third party to implement the plan, most likely in some form of contract. Examples of third parties that could be contracted to implement the plan include (but aren't limited to) property managers, engineers, general contractors, and/or contract operators.

DEQ can either approve or disapprove a closure plan. If a closure plan is disapproved, the disapproval letter should specify the requirements necessary for the owner or operator to achieve an approvable plan.

## **2. Cost Estimate**

**Reviewer:** Submitted to and reviewed by regional office staff.  
**Timeline:** 60 day review period.

The regulation requires that a detailed written estimate of the cost to implement the proposed closure plan be submitted concurrently with the plan. The cost estimate should be presented in sufficient detail so that it can be adequately reviewed by DEQ to determine if the cost estimate is a reasonable reflection of the projected cost to implement the plan. For instance, a cost estimate that simply includes a lump sum prepared and submitted by the owner for plan implementation would be unacceptable. However, an executed lump sum contract with a named third party for plan implementation would be acceptable; the third party has entered into a contractual obligation to perform the contracted services for the agreed upon amount.

A key element of the cost estimate is the inclusion of the cost for the third party to implement the plan, and this should be listed separately from the actual plan cost. This is essentially a management fee and in many cases will require a separate contract. An exception to this may be where the plan is for contract operation and the third party is the same as the contract operator. In such a case the contract operator and the "implementing" party are the same, and separation of costs is unnecessary.

The regulation prohibits the consideration of any salvage value that may be realized by the sale of wastes, facility structures or equipment, land, or other facility assets at the time of implementation of the plan. A cost estimate including such consideration can therefore not be approved.

DEQ can either approve or disapprove a cost estimate. If a cost estimate is disapproved, the disapproval letter should specify the requirements necessary for the owner or operator to achieve an approvable cost estimate.

Upon the written request of the owner or operator, and at the sole discretion of the DEQ, a cost estimate may include a schedule for incremental funding of the required financial assurance. Incremental funding is intended to decrease the initial burden of providing financial assurance for existing facilities with valid

VPDES permits, and is therefore not allowed for new or expanding discharges, or where a financial assurance mechanism is already in place.

For a request for incremental funding to be approved, the following conditions must be met:

1. The facility must have been in operation, with a valid VPDES permit, for a period of at least 5 years prior to December 14, 2000;
2. The facility must have been substantially in compliance with its VPDES permit for at least 5 years prior to the effective date of the current VPDES permit; and
3. The facility can not be within 5 years of the expected facility life and there are no foreseeable factors that will shorten the estimate of facility life, to include facility upgrade or expansion.

Substantially in compliance is a purposefully vague term intended to allow judgment and discretion on the part of the regional office in allowing incremental funding. The intent is that those facilities with compliance records suggesting an increased potential to cease operations as defined in the regulation are not approved for incremental funding.

If a request for incremental funding is approved by DEQ and submitted as part of the cost estimate, the following additional restrictions apply for the incremental funding cost estimate to be approved:

1. The cost estimate must include a statement from a registered professional engineer that the cost estimate is complete and accurate;
2. The cost estimate must include a schedule for funding the total amount of the cost estimate through the financial assurance mechanism within 5 years of the initial date required by the regulation; and
3. The funding schedule must consist of annual payments, each of which can be no less than 20 percent of the total amount of the cost estimate.

### **3. Financial Assurance Mechanism**

**Reviewer:** Submitted directly to, and reviewed by, central office financial assurance staff.  
**Timeline:** 60 days for draft document, 10 days for original financial assurance mechanism.

The regulation specifies three allowable financial mechanisms that can be used either alone or in conjunction with one another to demonstrate financial capability to implement the closure plan. The three allowable financial mechanisms are:

Trust Agreement  
Surety Bond with a Standby Trust Agreement  
Letter of Credit with a Standby Trust Agreement

The wording of each financial assurance mechanism is specified in the regulation. The wording of the financial assurance mechanism must be *exactly* as it is contained in the regulation.

**Original financial assurance mechanisms should be sent by the owner or operator directly to Central Office financial assurance staff via registered mail. In the event original financial assurance mechanisms are received at the Regional Office, the document should immediately be sent to Central Office financial assurance staff via registered mail. DO NOT SEND ORIGINAL FINANCIAL ASSURANCE DOCUMENTS VIA INTEROFFICE MAIL.**

Appendix A - "Virginia Department of Environmental Quality, Financial Responsibility Demonstration Review Procedures, Private Sewage Treatment Facilities" presents the procedures to be used by Central Office financial assurance staff in the review of these documents.

### **Regional Office Responsibility**

The Regional Office is responsible for determining whether a closure plan, cost estimate, and financial assurance are required for a facility applying or re-applying for a VPDES permit. The Regional Office is also responsible for determining when these items are no longer required for a facility. A listing of facilities identified as of November 12, 2000 as being subject to the requirements of the regulation is included as Appendix B.

The Regional Office is responsible for reviewing the facility closure plan and cost estimate, and for ensuring that the facility closure plan and cost estimate are updated to reflect changes in flow or other facility characteristics that substantially affect the facility closure plan. The Regional Office is also responsible for reviewing requests for incremental funding and associated funding schedules where approval for incremental funding is granted.

The Regional Office is responsible for ensuring that an approved facility closure plan, cost estimate and financial assurance mechanism are in place at the time of permit issuance or reissuance.

The Regional Office is responsible for reviewing any changes to the facility closure plan and cost estimate, with the exception of cost estimate changes made exclusively to account for inflation.

The Regional Office is responsible for making the final determination that a facility has ceased operations as defined in the regulation and that implementation of a closure plan is necessary.

### **Central Office Role**

The Office of Water Permit Programs is responsible for providing technical assistance in the review of closure plans and cost estimates upon request from the Regional Office.

Financial assurance staff is responsible for reviewing draft financial assurance mechanisms, for approval of final financial assurance mechanisms, and for review of cost estimate changes made exclusively to account for inflation.

Financial assurance staff is responsible for ensuring that the amount of financial assurance is consistent with the approved cost estimate, and for tracking funding increases according to the approved schedule where incremental funding has been approved.

Financial assurance staff is responsible for storing and tracking the originals of financial assurance mechanisms.

Financial assurance staff is responsible for tracking to ensure continued coverage is maintained once a financial assurance mechanism is in place, and for notifying the Regional Office whenever continued coverage is jeopardized.

Financial assurance staff is responsible for drawing on the financial assurance mechanism if the owner or operator fails to establish alternate financial assurance as required, or upon notification by the Regional Office that a facility has ceased operations and implementation of a closure plan is necessary.

### **Communication and Correspondence within DEQ**

Maintaining effective communication between Central Office financial assurance staff and Regional Office staff is critical. Therefore, all actions relative to financial assurance made by Central Office financial assurance staff shall be communicated to the appropriate Regional Office staff prior to taking such action.



Similarly, the Regional Office staff shall communicate to Central Office financial assurance staff any action or findings which could affect the status of the financial assurance mechanism or which have the potential to invoke a drawing on the mechanism.

The Regional Office is responsible for informing the FA Manager of facilities that must demonstrate financial assurance. The Regional Office will provide updates to the list in Appendix B as facilities are added or VPDES permit expiration dates change.

The Regional Office should provide a copy of the DEQ approved cost estimate, including the incremental funding schedule, if any, to the FA Manager.

Financial assurance staff will provide a copy of current financial assurance mechanism to the Regional Office for inclusion in the VPDES permit file.

The appropriate Regional Office staff to be copied on correspondence between the FA manager and the owner or operator are:

The RO Water Permit Manager should be copied on all documentation relating either to the establishment or renewal of a financial assurance mechanism.

The RO Compliance Manager should be copied on all documentation relating to maintaining, or the failure to maintain, a financial assurance mechanism already in place.

### **VPDES Permit Special Conditions**

The following special conditions must be included in all VDPES permits for facilities subject to 9 VAC 25-650:

The permittee shall provide continuous coverage to implement the approved closure plan until released from financial assurance requirements by the State Water Control Board. If a transfer of ownership or operational control of this facility occurs, the permittee shall comply with the requirements of 9 VAC 25-650 until the new owner or operator has demonstrated compliance with the requirements of 9 VAC 25-650. Failure to maintain adequate financial assurance in accordance with 9 VAC 25-650 shall be a basis for termination of this VDPES permit.

During the term of this VPDES permit, the permittee shall revise the closure plan implementation cost estimate concurrently with any revision made to the closure plan which increases the closure plan cost. At a minimum, the permittee shall annually adjust the closure plan implementation cost estimate in accordance with 9 VAC 25-650 within 60 days prior to the anniversary date of the establishment of the approved financial assurance mechanism.

The permittee shall disclose the provisions of this permit to all purchasers of property served by this permitted facility in accordance with Section 55-519 of the Code of Virginia.

#### **[insert the following for new or expanding discharges only]**

The approved financial assurance mechanism shall be filed with the State Water Control Board no less than 90 days prior to [discharge][the permitted increase in discharge] to State waters. [Discharge][An increase in discharge] to State waters shall not be permitted unless and until an approved financial assurance mechanism is in place.

Please contact Jon van Soestbergen, 804-698-4117, if there are any questions regarding this guidance.

#### **DISCLAIMER**

**This document provides procedural guidance to the permit staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of site-specific facts when the permits are issued.**

## Appendix A

### **VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY FINANCIAL RESPONSIBILITY DEMONSTRATION REVIEW PROCEDURES Private Sewage Treatment Facilities**

#### **1. Introduction**

An owner or operator of a private sewage treatment facility is required to submit the documents demonstrating its financial responsibility in the following circumstances:

- A. For new facilities the initial application for a VPDES permit must be submitted with a closure plan and cost estimate. After DEQ approval, acceptable financial assurance must be submitted at least 90 days prior to actual discharge to State waters.
- B. For existing facilities that desire to increase discharges, acceptable financial assurance must be submitted at least 90 days prior to the increased discharge to State waters.
- C. For existing facilities with a valid VPDES permit on the effective date of this regulation, financial assurance must be submitted within 10 days of the date of the approval of the closure plan and cost estimate.
- D. Within 60 days after the owner or operator of a private sewerage facility receives notice that the financial assurance provider is bankrupt, has had its authority to issue financial assurance mechanisms revoked or suspended, or experiences any other incapacity.
- E. Immediately if a provider of assurance cancels or fails to renew the assurance mechanism and the owner or operator fails to obtain alternate coverage within 60 days of the notice of termination or nonrenewal.
- F. For changes in ownership or operational control of a facility, financial assurance must be submitted by the new owner or operator within six months of the date of the change of ownership.
- G. At any time the DEQ requests the documents.

#### **2. Authority**

Section 62.1-44.18:3 in the State Water Control Law (SWCL) of the Code of Virginia provides the statutory authority to require an owner or operator of a private sewerage facility to demonstrate financial assurance for a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. 9 VAC 25-650-10 *et seq.* (the Regulation) provides the regulatory authority for this requirement.

#### **3. Definitions**

The definitions in the Regulation apply to these Procedures.

#### **4. Methods to Demonstrate Financial Responsibility**

Trust Agreement as described in 9 VAC 25-650-90 of the Regulation.

Surety Bond and Standby Trust Agreement as described in 9 VAC 25-650-100 and 9 VAC 25-650-120 of the Regulation.

Letter of Credit and Standby Trust Agreement as described in 9 VAC 25-650-110 and 9 VAC 25-650-120 of the Regulation.

**5. Requirements for all Financial Responsibility Mechanisms:**

- A. Facsimile copies or photocopies are never acceptable substitutes for original documents, if the original document is required by the Regulation. The FA Manager should not give approval based on a facsimile or photocopy. Original financial mechanisms are always required before final approval can be granted.
- B. When the financial assurance documentation is complete and in compliance with the Regulation, the financial assurance staff must send a compliance letter to the owner or operator. A copy of the letter should be sent to the RO Water Permit Manager.
- C. Original Letters of Credit, Surety Bonds, Trust Agreements and Standby Trust Agreements are filed in the safe. Copies of these mechanisms are kept in a duplicate file. A copy of the mechanism should be sent to the RO Water Permit Manager.

**6. The review procedures for each mechanism are described below:**

**Trust Agreement and Standby Trust Agreement**

The Trust Agreement must be irrevocable and shall continue until terminated at the written direction of grantor, the trustee, and the Board or by the trustee and the State Water Control Board if the grantor ceases to exist. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

- A. The language of the trust agreement and standby trust agreement must be identical to the language described in 9 VAC 25-650-90.
- B. The irrevocable trust agreement shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage. Please note that Incremental Funding of the amount of financial assurance required may be allowed at the sole discretion of the Board for existing facilities discharging in compliance with a current VPDES permit on the effective date of this regulation. Incremental funding of the amount of financial assurance required shall not be allowed for new or expanded discharges. Incremental funding of the amount of financial assurance shall not be allowed where a mechanism is already in place. Incremental funding of the amount of financial assurance required shall be considered only upon written request.
- C. An owner or operator using the standby trust agreement as a requirement for the Bond or Letter of Credit must replace the instructions in brackets with the relevant information and the brackets deleted.

**Letter of Credit**

The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter of credit operations are regulated and examined by a federal agency or the State Corporate Commission.

- A. The letter of credit must be a signed original document. The language of the letter of credit must be identical to the language prescribed in 9 VAC 25-650-110 of the Regulation. The face of the letter of credit must provide the facility name, physical address, and the location of the facility assured with this mechanism.

- B. The face amount of the letter of credit must be equal to the total cost estimate or appropriate fraction if the letter of credit is used in combination with another payment mechanism.
- C. The appropriate terms in brackets must be included and the brackets deleted.
- D. Review of the Standby trust agreement is the same as prescribed in the trust agreement.

### **Performance Bond**

Performance bonds are issued to an owner or operator by a company licensed to operate as a surety in the Commonwealth of Virginia. The company must be one listed as an acceptable surety on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury. [**Note:** Website can be found at [www.fms.treas.gov/c570/index/html](http://www.fms.treas.gov/c570/index/html)].

- A. The surety bond must be a signed, original document accompanied by a signed, notarized Power of Attorney indicating that the representative of the bonding company was authorized to sign on its behalf. The language of the surety bond must be identical to the language prescribed in 9 VAC 25-650-100 of the Regulation. The bond heading must indicate the period of coverage, the legal name and business address of the owner or operator, and the name(s) and address(es) of the facility(ies) where the facility(ies) is/are located. The appropriate terms in brackets should be included in the form and the brackets deleted.
- B. The penal sum of the bond must be equal to the approved cost estimate.
- C. The appropriate terms in brackets must be included and the brackets deleted.
- D. Review of the standby trust agreement is the same as prescribed in the trust agreement.

### **7. Financial Assurance Review of an Annual Update**

Each owner or operator must update his financial assurance by the anniversary date of his mechanism. The anniversary date is the effective date of the mechanism.

### **8. Financial Assurance Review Procedures in an Enforcement Action**

An owner or operator of a private sewage treatment facility may become obligated to demonstrate financial assurance as a result of a letter of agreement, notice of violation, or other compliance or enforcement action.

The regional office inspection staff shall send a copy of any compliance or enforcement action to the FA Manager. Upon receipt of the notice, the FA Manager will coordinate a response with the RO Water Permit Manager and send a reminder letter to the owner or operator describing the available options and reiterating the submission deadlines imposed by the action. The FA Manager will copy the RO Water Permit Manager on all correspondence with the owner or operator.

Upon receipt of the financial responsibility documents, the FA Manager will review the mechanism for compliance with the Regulation by comparing the language of the mechanism to the language prescribed in the appropriate section of the Regulation. The review procedures for each mechanism are identical to those described above.

If the financial assurance documents do not comply with the Regulation, the FA Manager will notify the RO Water Permit Manager and then contact the owner or operator by letter. The letter should impose a 30-day deadline for compliance. The FA Manager will copy the RO Water Permit Manager on all correspondence with the owner or operator. The FA Manager may grant one extension to a submission

deadline; however, any additional extension requests should be cleared through the RO Water Permit Manager.

## **9. Drawing on a Financial Assurance Mechanism**

DEQ can draw on the financial assurance mechanism if DEQ has made a final determination that the facility has ceased operations. Additionally, DEQ can draw on the financial assurance mechanism if the owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the surety bond or letter of credit.

DEQ can not cash the financial assurance mechanism for failure to adjust for inflation or for failure to increase the amount of financial assurance based on a revised cost estimate.

## **10. Cancellation or Termination of a Mechanism, Release from Financial Assurance Obligations, etc.**

A. Surety Bonds and Letters of credit can be cancelled or allowed to expire by the provider of financial assurance. In these cases, the Department will act to cash the mechanism or obtain alternate financial assurance before the mechanism expiration date. The following procedures are applicable to each mechanism:

### **1. Letter of Credit**

- a. The financial institution providing the letter or credit must provide 120 days notice of cancellation or termination of the letter of credit to the Department and the applicant.
- b. Upon receipt of the notice, the Department will notify the facility owner/operator by letter of the intended termination and direct the owner/operator to provide a replacement mechanism in the amount of the expiring one. The letter will direct the facility owner/operator to submit an alternate mechanism to the Department within 60 days after receiving notice of cancellation. The letter should warn the owner/operator of the date and time that the Department intends to cash the mechanism if alternate financial assurance is not provided. The letter should include a copy of the cancellation notice. All correspondence from the Department to the owner or operator should be copied to the Regional Office Compliance Manager.
- c. If the Department has not received an acceptable replacement mechanism within 30 days of the stated expiration date, the Department will send a demand letter to the issuing institution of the letter of credit directing the provider to cash the letter of credit and transmit the entire amount of the letter of credit into the facility's standby trust account. The letter will give a cashing date as the stated expiration date. The FA Manager will contact the trustee of the standby trust before issuing the letter in order to obtain transmittal instructions. The FA Manager will copy the RO Compliance Manager, the Trustee of the standby trust, and the facility owner/operator on the letter. The FA Manager should send a copy of the letter to facility owner/operator along with a letter reiterating the Department's request for an alternate mechanism.
- d. The demand letter should be accompanied by the original letter of credit and a signed sight draft. The letter should direct the issuing institution to transmit the entire amount of the letter of credit into the facility's standby trust account. The letter should give the cashing date as the stated

expiration date.

- e. The FA Manager will copy the RO Compliance Manager and the facility owner/operator on the letter. The FA Manager will send a copy of the letter to the facility owner/operator along with a letter reiterating the Department's request for an alternate mechanism.
- f. If the Department receives an alternate mechanism from the facility owner/operator, the FA Manager will review it according to the procedures set out in Section 6. If the mechanism complies with the Regulation and is in the amount of the previous mechanism, the Department will issue a letter to the financial assurance provider retracting the demand for the funds. The letter should be faxed to the provider and the facility owner/operator and the original mailed certified to the provider. The RO Water Permit Manager and the facility owner/operator should be copied on the letter.
- g. If the replacement mechanism does not comply with the Regulation, the FA Manager will contact the facility owner/operator immediately with the required changes. If the facility owner/operator submits a corrected mechanism before the cashing date then the procedures described in the previous subsection should be followed.
- h. If the facility owner/operator does not submit a replacement mechanism or submits a mechanism that does not comply with the Regulation and fails to correct the problems in time, the Department will not issue a retraction letter and the financial assurance provider will cash the mechanism.
- i. The FA Manager will contact the RO Compliance Manager by memo indicating that the facility owner/operator is in violation of the Regulation and directing the RO to take action to get the facility into compliance.
- j. Upon receipt of an acceptable mechanism in the amount of the expired mechanism, the Department will return the funds to the facility owner/operator via registered mail.

2. Performance Bond

- a. The surety providing the surety bond must provide 120 days notice of cancellation or termination of the bond to the Department and the applicant.
- b. Upon receipt of the notice, the Department will notify the facility owner/operator by letter of the intended termination and direct the owner/operator to provide a replacement mechanism in the amount of the expiring one. The letter will direct the facility owner/operator to submit an alternate mechanism to the Department within 60 days after receiving notice of cancellation. The notice should warn the owner/operator of the date and time that the Department intends to cash the mechanism if alternate financial assurance is not provided. The letter should include a copy of the cancellation notice.
- c. If the Department has not received an acceptable replacement mechanism within 60 days of the stated expiration date, the Department will send a demand letter to the surety directing the provider to cash the

bond and transmit the entire amount of the bond into the facility's standby trust account. The letter will give a cashing date of thirty (30) days prior to the expiration date. The FA Manager will contact the trustee of the standby trust before issuing the letter in order to obtain transmittal instructions. The FA Manager will copy the RO Compliance Manager, the Trustee of the standby trust, and the facility owner/operator on the letter. The FA Manager should send a copy of the letter to facility owner/operator along with a letter reiterating the Department's request for an alternate mechanism.

The demand letter should be accompanied by the original bond. The letter should direct the issuing institution to transmit the entire amount of the bond into the facility's standby trust account. The letter should give the cashing date as 30 days prior to the expiration date.

The FA Manager will copy the Regional Office Compliance Manager and the facility owner or operator on the letter. The FA Manager will send a copy of the letter to the facility owner or operator along with a letter reiterating the Department's request for an alternate mechanism.

- d. If the Department receives an alternate mechanism from the facility owner/operator, the FA staff will review it according to the procedures set out in Section 6. If the mechanism complies with the Regulation and is in the amount of the previous mechanism, the Department will issue a letter to the surety retracting the demand for the funds. The letter will be faxed to the surety and the facility owner/operator and the original mailed certified to the provider. The RO Compliance Manager, the Trustee and the facility owner/operator will be copied on the letter.
- e. If the replacement mechanism does not comply with the Regulation, the FA staff will contact the facility owner/operator immediately with the required changes. If the facility owner/operator submits a corrected mechanism before the cashing date then the procedures described in the previous subsection will be followed.
- f. If the facility owner/operator does not submit a replacement mechanism or submits a mechanism that does not comply with the Regulation and fails to correct the problems in time, the Department will not issue a retraction letter and the surety will cash the mechanism. At this point, the FA staff should notify the Trustee via telephone that the funds will be forthcoming and request written confirmation of receipt of the funds.
- g. Upon receipt of an acceptable mechanism in the amount of the expired mechanism, the Department will return the funds to the facility owner/operator via registered mail. If the facility owner/operator fails to provide an alternate mechanism, the trustee according to the regulatory provisions governing trust agreements will manage the standby trust fund.

B. Disqualification of a Financial Provider. An owner/operator will be required to obtain a replacement mechanism if his existing financial provider is deemed ineligible to continue providing financial assurance.

- 1. An owner/operator must notify the Department immediately if a financial provider has filed for bankruptcy or if the provider's authority to issue the mechanism has been suspended or revoked. The owner/operator must provide a replacement



mechanism in the amount of the existing mechanism within sixty (60) days of the date upon which the financial provider becomes ineligible.

2. Upon receipt of a replacement mechanism from the owner/operator, the FA Manager will review it according to the procedures set out in Section 6. If the mechanism complies with the Regulation and is in the amount of the current cost estimate, then the FA Manager will issue a letter releasing the existing mechanism. The RO Water Permit Manager will be copied on the letter.
3. If the owner/operator does not provide acceptable financial assurance to replace the existing mechanism pursuant to the previous subsection, the FA Manager will contact the RO Compliance Manager by memo indicating that the facility owner/operator is in violation of the Regulation and directing the RO to take action to get the facility into compliance.

#### **11. Release of an Owner/Operator from the Financial Assurance Requirements.**

Where the closure plan results in the termination of discharge to State waters and a VPDES permit for the discharge is no longer required, the Board shall verify, within 60 days after receiving certification from the owner or operator that the discharge to State waters has ceased and a VDPES permit is no longer required, or that the closure plan has been completed in accordance with the requirements of the approved closure plan, permit or other order, whether a VPDES permit is still required. Unless the Board has reason to believe that a VPDES permit is still required, the Board shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the particular facility.

Appendix B

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
FACILITIES SUBJECT TO 9 VAC 25-650 "CLOSURE PLANS AND DEMONSTRATION OF  
FINANCIAL CAPABILITY" AS OF NOVEMBER 12, 2000**

<b>DEQ Region</b>	<b>VPDES Permit No</b>	<b>Facility Name</b>	<b>Design Flow (MGD)</b>	<b>VPDES Permit Expiration Date</b>
NVRO	VA0027855	Gleaton's Mobile Homes	0.0198	22-Jul-02
NVRO	VA0061409	Minarchi Mobile Home Park	0.025	22-Dec-00
NVRO	VA0064157	Town and Country Restaurant	0.0038	16-Jul-04
NVRO	VA0068934	Glenwood Mobile Home Park	0.03	25-Oct-05
NVRO	VA0073717	Cleydael Limited Partnership	0.025	05-Jun-02
NVRO	VA0074934	Lucketts Mobile Home Park	0.0062	19-Nov-02
NVRO	VA0074942	Hiway Trailer Park	0.012	15-Oct-02
NVRO	VA0082911	Hill Mobile Home Park & New Yorker Restaurant	0.015	17-Jan-01
NVRO	VA0086720	Presidential Lakes Section 14 Sewage Treatment	0.035	19-May-02
NVRO	VA0089966	Red Oak STP	0.008	10-May-04
PRO	VA0020885	Callao Shops & Apartments	0.0035	12-Dec-03
PRO	VA0028258	Red Hill Mobile Home Park	0.039	31-Mar-02
PRO <sup>1</sup>	VA0029343	Tides Inn Utilities, LLC – North	0.0325	04-Jun-04
PRO	VA0031356	Prince George Sewer and Water	0.036	02-Jul-04
PRO	VA0060569	Windmill Point Marine Resort	0.03	12-Dec-00
PRO	VA0061921	Goochland Mobile Home Sites	0.032	10-Sep-03
PRO	VA0062316	Pine Grove Park STP	0.006	17-Feb-03
PRO	VA0062421	Newton Mobile Home Court	0.03	30-Jun-02
PRO	VA0063282	Lakewood Trailer Court	0.008	30-Sep-04
PRO	VA0063291	Sprouses Motel	0.01	30-Jun-02
PRO	VA0063568	Southern Mobile Home Park	0.0096	17-Aug-04
PRO	VA0066494	Flippo Mobile Home Court	0.03	06-Jun-05
PRO	VA0067270	Pine Street Village WWTP	0.01	22-Jul-03
PRO	VA0079057	Sign Post Estates	0.0144	04-Jan-04
PRO	VA0087653	Sprouses Motel	0.0032	23-Dec-02
PRO	VA0089401	Newstead Landing STP	0.006	15-Oct-02
SWRO	VA0063941	Dot Mobile Home Park STP	0.01	11-Mar-04
SWRO	VA0064009	Beeline Trailer Park STP	0.007	26-Apr-03
SWRO	VA0065471	Empire Mobile Home Park STP	0.015	14-Jan-01
SWRO	VA0065676	Glenrae II Mobile Home Park STP	0.02	30-Jun-05
SWRO	VA0078531	Pine Ridge Trailer Park STP	0.009	20-Jul-03
SWRO	VA0089249	Ken Mac Development Incorporated STP	0.02	01-Mar-01
SWRO	VA0090166	Watkins Glen Subdivision WWTP	0.0176	14-Jul-05
TRO	VA0065196	Edgewood Mobile Home Park	0.006	15-Mar-05
TRO	VA0088072	Carrollton Court	0.0037	01-Jan-04
VRO	VA0027626	Valley View Mobile Home Ct STP	0.02	02-Sep-03
VRO	VA0028401	Shrine Mont STP	0.039	20-Nov-01

<b>DEQ Region</b>	<b>VPDES Permit No</b>	<b>Facility Name</b>	<b>Design Flow (MGD)</b>	<b>VPDES Permit Expiration Date</b>
VRO	VA0029955	Southwood Mobile Home Estates STP	0.039	30-Jun-04
VRO	VA0073644	Valley Sanitation, Inc. STP	0.0045	27-Mar-02
VRO	VA0078913	Head Waters Lodge STP	0.0058	18-Aug-03
VRO	VA0080535	Two Hills Inc. STP	0.0054	24-Mar-04
VRO	VA0083305	Camp Overlook	0.03	15-Apr-01
VRO	VA0088285	Wunder Orchards STP	0.0075	12-Apr-05
VRO	VA0088421	Twin Oaks Community STP	0.01	08-Aug-04
VRO	VA0088943	Blue Ridge Mobile Home Park	0.018	30-May-05
VRO	VA0088960	Canaan Valley Estates	0.006	03-Apr-05
VRO	VA0089061	Woodlawn Village M. H. Park	0.03	29-Sep-05
VRO	VA0089095	Pioneer Trailer Park	0.005	04-Jan-01
VRO	VA0089346	Kayhill Estates STP	0.005	30-Dec-01
VRO	VA0090051	Caroline Furnace Lutheran Camp	0.01	18-Nov-03
VRO	VA0090409	Gum Spring STP	0.016	17-Aug-05
WCRO	LHS120	Doyles Mobile Home Park		Unpermitted
WCRO	VA0027481	Blacksburg Country Club STP	0.035	25-May-03
WCRO	VA0028711	Suncrest Heights STP	0.02	30-Jul-03
WCRO	VA0031194	Briarwood Village STP	0.024	02-Feb-02
WCRO	VA0060992	Huntingwood Apartments STP	0.035	11-Apr-05
WCRO	VA0061042	Bennies Mobile Home Park STP	0.035	17-Aug-05
WCRO	VA0062031	Evergreen Mobile Home Park STP	0.015	07-Jan-01
WCRO	VA0072389	Oak Ridge Mobile Home Park STP	0.03	06-May-01
WCRO	VA0074586	Country Oaks LLC STP	0.03	03-Mar-03
WCRO	VA0086614	Hammock's Trailer Park	0.0195	06-Feb-02
WCRO	VA0087165	Hardy Road Trailer Park	0.0063	02-Mar-02
WCRO	VA0087840	Dillons Trailer Park STP	0.018	18-Nov-03
WCRO	VA0088552	Sponaugle Subdivision STP	0.032	08-Sep-05
WCRO	VA0089001	Douthat Road Mobile Home Park STP	0.011	17-Jul-05
WCRO	VA0090174	Green Acres Mobile Home Park STP	0.01	16-Jul-04

1 - Facility added 1/11/01